



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/271,762 04/22/99 DAS

G 16848.11.11

EXAMINER

QM12/0913

EDWARD S. HOTCHKISS
FREDRIKSON & BYRON,
1100 INTERNATIONAL CENTRE
900 2ND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3397

JACKSON, G

ART UNIT	PAPER NUMBER
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3731

DATE MAILED:

09/13/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/271,762	DAS, GLADWIN S.	
	Examiner Jackson, Gary	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) Responsive to communication(s) filed on 18 March 1999.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 31-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 31-36 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) All b) Some * c) None of the CERTIFIED copies of the priority documents have been:

1. received.
2. received in Application No. (Series Code / Serial Number) _____ .
3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

GJ 9/12/99
GARY JACKSON
PRIMARY EXAMINER
GROUP 3300

Attachment(s)

14) <input type="checkbox"/> Notice of References Cited (PTO-892)	17) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
15) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	18) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
16) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	19) <input type="checkbox"/> Other: _____

Art Unit: ***

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 30-36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31-46 of copending Application No. 08/756,776. Although the conflicting claims are not identical, they are not patentably distinct from each other because the size of the disk though not in the independent claim 31, does not patentably distinguish the claims and further the limitation is recited in the dependent claims of said application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (703) 308-

Art Unit: ***

4302. The examiner can normally be reached on Monday-Thursday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Buiz, can be reached on (703) 308-0871. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Gary Jackson

September 12, 1999

Gary Jackson
9/12/99
GARY JACKSON
PRIMARY EXAMINER
GROUP 3300